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## **An Act To Require Cause for Employment Termination**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 26 MRSA c. 37** is enacted to read:

### **CHAPTER 37**

### **MAINE EMPLOYMENT TERMINATION ACT**

#### **§ 3151. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Employee.** "Employee" means an individual who works for hire, including an individual employed in a supervisory, managerial or confidential position, but not an independent contractor.

**2. Employer.** "Employer" means a person that has employed 5 or more employees for each working day in each of 20 or more calendar weeks in the 2-year period next preceding a termination or an employer's filing of a complaint pursuant to section 3155, subsection 3, excluding a parent, spouse, child or other member of the employer's immediate family or of the immediate family of an individual having a controlling interest in the employer.

**3. Fringe benefit.** "Fringe benefit" means vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, pension benefit plan or other benefit of economic value, to the extent the leave, plan or benefit is paid for by the employer.

**4. Good cause.** "Good cause" means:

A. A reasonable basis related to an individual employee for termination of the employee's employment in view of relevant factors and circumstances, which may include the employee's duties, responsibilities, conduct on the job or otherwise, job performance and employment record; or

B. The exercise of business judgment in good faith by the employer, including setting its economic or institutional goals and determining methods to achieve those goals, organizing or reorganizing operations, discontinuing, consolidating or divesting operations or positions or parts of operations or positions, determining the size of its workforce and the nature of the positions filled by its workforce and determining and changing standards of performance for positions.

**5. Pay.** "Pay," as a noun, means hourly wages or periodic salary, including tips, regularly paid and nondiscretionary commissions and bonuses and regularly paid overtime, but not fringe benefits.

**6. Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture or any other legal or commercial entity, excluding government or a governmental subdivision, agency or instrumentality.

**7. Termination.** "Termination" means:

A. A dismissal, including that resulting from the elimination of a position, of an employee by an employer;

B. A layoff or suspension of an employee by an employer for more than 2 consecutive months; or

C. A quitting of employment or a retirement by an employee induced by an act or omission of the employer, after notice to the employer of the act or omission without appropriate relief by the employer, so intolerable that under the circumstances a reasonable individual would quit or retire.

## **§ 3152. Short title; scope**

**1. Short title; effective date.** This chapter may be known and cited as "the Maine Employment Termination Act." This chapter applies only to a termination that occurs after the effective date of this section.

**2. Exemptions.** This chapter does not apply to a termination at the expiration of an express oral or written agreement of employment for a specified duration that was valid, subsisting and in effect on the effective date of this section.

**3. Common-law rights displaced.** Except as provided in subsection 5, this chapter displaces and extinguishes all common-law rights and claims of a terminated employee against the employer, its officers, directors and employees that are based on the termination or on acts taken or statements made that are reasonably necessary to initiate or effect the termination if the employee's termination requires good cause under section 3153, subsection 1, is subject to an agreement for severance pay under section 3154, subsection 1, paragraph B or is permitted by the expiration of an agreement for a specified duration under 3154, subsection 1, paragraph C.

**4. Common-law rights protected.** An employee whose termination is not subject to section 3153, subsection 1 or section 3154, subsection 1, paragraph C and who is not a party to an agreement under section 3154, subsection 1, paragraph B retains all common-law rights and claims.

**5. Rights and claims maintained.** This chapter does not displace or extinguish rights or claims of a terminated employee against an employer arising under state or federal statutes or administrative rules or regulations having the force of law, a collective bargaining agreement between an employer and a labor organization or an express oral or written agreement relating to employment that does not violate this chapter. Those rights and claims may not be asserted under this chapter, except as otherwise provided in this chapter. The existence or adjudication of those rights or claims does not limit the employee's rights or claims under this chapter, except as stated in section 3157, subsection 4.

## **§ 3153. Prohibited terminations**

**1. Termination; severance pay.** Except as provided in subsection 2 and unless otherwise provided in an agreement for severance pay under section 3154, subsection 1, paragraph B or for a specified duration under section 3154, subsection 1, paragraph C, an employer may not terminate the employment of an employee without good cause.

**2. Application.** Subsection 1 applies only to an employee who has been employed by the same employer for a total period of one year or more and has worked for the employer for at least 520 hours during the 26 weeks next preceding the termination. A layoff or other break in service is not counted in determining whether an employee's period of employment totals one year, but the employee is considered to be employed during paid vacations and other authorized leaves. If an employee is rehired after a break in service exceeding one year, not counting absences due to labor disputes or authorized leaves, the employee is considered to be newly hired. The 26-week period for purposes of this subsection does not include any week during which the employee was absent because of layoffs of one year or less, paid vacations, authorized leaves or labor disputes.

## **§ 3154. Agreements between employer and employee**

**1. Rights of employee.** A right of an employee under this chapter may not be waived by agreement except as provided in this section.

A. By express written agreement, an employer and an employee may provide that the employee's failure to meet specified business-related standards of performance or the employee's commission or omission of specified business-related constitutes good cause for termination in proceedings under this chapter. Those standards or prohibitions are effective only if they have been consistently enforced and they have not been applied to a particular employee in a disparate manner without justification. If the agreement authorizes changes by the employer in the standards or prohibitions, the changes must be clearly communicated to the employee.

B. By express written agreement, an employer and an employee may mutually waive the requirement of good cause for termination, if the employer agrees that, upon the termination of the employee for any reason other than willful misconduct of the employee, the employer will provide severance pay in an amount equal to at least one month's pay for each period of employment totaling one year, up to a maximum total payment equal to 30 months' pay at the employee's rate of pay in effect immediately before the termination. The employer shall make the payment in a lump sum or in a series of monthly installments, none of which may be less than one month's pay plus interest on the principal balance. The lump sum payment must be made or payment of the monthly installments must begin within 30 days after the employee's termination. An agreement under this subsection constitutes a waiver by the employer and the employee of the right to civil trial, including jury trial, concerning disputes over the nature of the termination and the employee's entitlement to severance pay and constitutes a stipulation by the parties that those disputes are subject to the procedures and remedies of this chapter.

C. The requirement of good cause for termination does not apply to the termination of an employee at the expiration of an express oral or written agreement of employment for a specified duration related to the completion of a specified task, project, undertaking or assignment. If the employment continues after the expiration of the agreement, section 3153 applies to its termination unless the parties enter into a new express oral or written agreement under this subsection. The period of employment under an agreement described in this subsection counts toward the minimum periods of employment required by section 3153, subsection 2.

D. An employer may provide substantive and procedural rights in addition to those provided by this chapter, either to one or more specific employees by express oral or written agreement or to employees generally by a written personnel policy or statement, and may provide that those rights are enforceable under the procedures of this chapter.

E. An employing person and an employee not otherwise subject to this chapter may become subject to its provisions to the extent provided by express written agreement, in which case the employing person is deemed to be an employer.

F. An agreement between an employer and an employee subject to this chapter imposes a duty of good faith in its formation, performance and enforcement.

G. By express written agreement, an employer and an employee may settle at any time a dispute or claim arising under this chapter.

H. By express written agreement before or after a dispute or claim arises under this chapter, an employer and an employee may agree to private arbitration or other alternative dispute resolution procedure for resolving the dispute or claim.

I. By express written agreement after a dispute or claim arises under this chapter, an employer and an employee may agree to judicial resolution of the dispute or claim.

J. The substantive provisions of this chapter apply under an agreement authorized by paragraphs H and I.

## **§ 3155. Procedure and limitations**

**1. Employee complaint and demand for arbitration.** An employee whose employment is terminated may file a complaint and demand for arbitration under this chapter with the Maine Labor Relations Board not later than 180 days after the effective date of the termination, the date of the breach of an agreement for severance pay under section 3154, subsection 1, paragraph B or the date the employee learns or should have learned of the facts forming the basis of the claim, whichever is latest. The time for filing is suspended while the employee is pursuing the employer's internal remedies and has not been notified in writing by the employer that the internal procedures have been concluded. Resort to an employer's internal procedures is not a condition for filing a complaint under this chapter.

**2. Reason for termination.** Except when an employee quits, an employer, within 10 business days after a termination, shall mail or deliver to the terminated employee a written statement of the reasons for the termination and a copy of this chapter or a summary approved by the Maine Labor Relations Board.

**3. Employer complaint and demand for arbitration.** An employer may file a complaint and demand for arbitration under this chapter with the Maine Labor Relations Board to determine whether there is good cause for the termination of a named employee. At least 15 business days before filing, the employer shall mail or deliver to the employee a written statement of the employer's intention to file and the factors alleged to constitute good cause for a termination.

**4. Procedure.** The Maine Labor Relations Board shall promptly mail or deliver to the respondent a copy of the complaint and demand for arbitration. Within 21 days after receipt of a complaint, the respondent must file an answer with the Maine Labor Relations Board and mail a copy of the answer to the complainant. The answer of a respondent employer must include a copy of the statement of the reasons for the termination furnished to the employee.

**5. Fees.** When a complaint is filed, a complainant employee or employer shall pay a filing fee established by the Maine Labor Relations Board in an amount not exceeding the maximum filing fee for a civil action in the Superior Courts of this State. The Maine Labor Relations Board may waive or defer payment of the filing fee upon a showing of the complainant employee's indigency.

## **§ 3156. Arbitration; selection and powers of arbitrator; hearings; burden of proof**

**1. Arbitration.** The Maine Labor Relations Board shall adopt procedural rules to regulate arbitration under this chapter.

**2. Selection of arbitrators.** The Maine Labor Relations Board shall adopt rules specifying the qualifications, method of selection and appointment of arbitrators. An arbitrator serving under this chapter exercises the authority of the State.

**3. Discovery.** Subject to rules adopted by the Maine Labor Relations Board, all forms of discovery provided by applicable law, rule or regulation are available in the discretion of the arbitrator, who shall ensure there is no undue delay, expense or inconvenience. Upon request, the employer shall provide the complainant or respondent employee a complete copy of the employee's personnel file.

**4. Representation.** A party may be represented in arbitration by an attorney or other person authorized by law to represent an individual in arbitration.

**5. Burden of proof.** A complainant employee has the burden of proving that a termination was without good cause or that an employer breached an agreement for severance pay under section 3154, subsection 1, paragraph B. A complainant employer has the burden of proving that there is good cause for a termination. In all arbitrations, the employer shall present its case first unless the employee alleges that a quitting or retirement was a termination within the meaning of section 3151, subsection 8, paragraph C.

**6. Impermissible grounds.** If an employee establishes that a termination was motivated in part by impermissible grounds, the employer, to avoid liability, must establish by a preponderance of the evidence that it would have terminated the employment even in the absence of the impermissible grounds.

## **§ 3157. Awards**

**1. Notice.** Within 30 days after the close of an arbitration hearing or at a later time agreeable to the parties, the arbitrator shall mail or deliver to the parties a written notice of award sustaining or dismissing the complaint, in whole or in part, and specifying appropriate remedies, if any.

**2. Awards for wrongful termination.** An arbitrator may make one or more of the following awards for a termination in violation of this chapter:

A. Reinstatement to the position of employment the employee held when employment was terminated or, if that is impractical, to a comparable position;

B. Full or partial back pay and reimbursement for lost fringe benefits, with interest, reduced by interim earnings from employment elsewhere, benefits received and amounts that could have been received with reasonable diligence;

C. If reinstatement is not awarded, a lump-sum severance payment at the employee's rate of pay in effect before the termination, for a period not exceeding 36 months after the date of the award, together with the value of fringe benefits lost during that period, reduced by interim earnings and benefits from employment elsewhere, and taking into account such equitable considerations as the employee's length of service with the employer and the reasons for the termination; and

D. Reasonable attorney's fees and costs.

**3. Awards for violation of severance agreement.** An arbitrator may make either or both of the following awards for a violation of an agreement for severance pay under section 3154, subsection 1, paragraph B:

A. Enforcement of the severance pay and other applicable provisions of the agreement, with interest; and

B. Reasonable attorney's fees and costs.

**4. Conditions on awards.** An arbitrator may not make an award except as provided in subsections 2 and 3. The arbitrator may not award damages for pain and suffering, emotional distress, defamation, fraud or other injury under the common law; punitive damages; compensatory damages; or any other monetary award. In making a monetary award under this section, the arbitrator shall reduce the award by the amount of any monetary award to the employee in another forum for the same conduct of the employer. In making an award, the arbitrator is subject to the rules applicable in courts of record in this State.

**5. Frivolous employee complaint.** If an arbitrator dismisses an employee's complaint and finds it frivolous, unreasonable or without foundation, the arbitrator may award reasonable attorney's fees and costs to the prevailing employer.

**6. Sustain or dismiss employer complaint.** An arbitrator may sustain an employer's complaint and make an award declaring that there is good cause for the termination of a named employee. If the arbitrator dismisses the employer's complaint, the arbitrator may award reasonable attorney's fees and costs to the prevailing employee.

### **§ 3158. Judicial review and enforcement**

**1. Judicial review.** Either party to an arbitration may seek vacation, modification or enforcement of the arbitrator's award in the Superior Court for the county in which the termination occurred or in which the employee resides.

**2. Timeliness.** An application for vacation or modification must be filed within 90 days after issuance of the arbitrator's award. An application for enforcement may be filed at any time after issuance of the arbitrator's award.

**3. Court findings.** The court may vacate or modify an arbitrator's award only if the court finds that:

- A. The award was procured by corruption, fraud or other improper means;
- B. There was evident partiality by the arbitrator or misconduct prejudicing the rights of a party;
- C. The arbitrator exceeded the powers of an arbitrator;
- D. The arbitrator committed a prejudicial error of law; or
- E. Another ground exists for vacating the award under the arbitration laws of this State.

**4. Fees.** In an application for vacation, modification or enforcement of an arbitrator's award, the court may award a prevailing employee reasonable attorney's fees and costs. In an application by an employee for vacation of an arbitrator's award, the court may award a prevailing employer reasonable attorney's fees and costs if the court finds the employee's application is frivolous, unreasonable or without foundation.

### **§ 3159. Posting**

An employer shall post a copy of this chapter or a summary approved by the Maine Labor Relations Board in a prominent place in the work area. An employer who violates this section is subject to the penalties set forth in section 704.

### **§ 3160. Retaliation prohibited and civil action created**

An employer or other employing person may not directly or indirectly take adverse action in retaliation against an individual for filing a complaint, giving testimony or otherwise lawfully participating in proceedings under this chapter, whether or not the individual is an employee having rights under this chapter. An employer or other employing person who violates this section is liable to the individual subjected to the adverse action in retaliation for damage caused by the action, punitive damages when appropriate and reasonable attorney's fees. A separate civil action may be brought to enforce this liability. The employer is also subject to applicable procedures and remedies provided by sections 3155 to 3158.

### **§ 3161. Savings and transitional provisions**

This chapter does not apply to the termination of an employee within 6 months after the effective date of this chapter based upon the employee's refusal to enter into an agreement meeting the minimum standards of section 3154, subsection 1, paragraph B, which the employer, in the exercise of good faith business judgment, may impose as a condition of continued employment.

## **SUMMARY**

This bill enacts the Maine Employment Termination Act.